# 2009 DRAFTING REQUEST

# Bill

Received: 01/23/2009				Received By: phurley					
Wanted: As time permits					Identical to LRB:				
For: Administration-Budget  This file may be shown to any legislator: NO					By/Representing: Wavrunek				
					Drafter: phurley				
May Contact:					Addl. Drafters:				
Subject: Correctional System - misc				Extra Copies:					
Submit v	ia email: <b>YES</b>								
Requester	r's email:								
Carbon co	opy (CC:) to:								
Pre Topi	ic:					**************************************			
DOA:	.Wavrunek, B	B0514 -							
Topic:	AMERICA								
Probation	supervision f	or misdemeano	rs						
Instructi	ions:								
See attacl	hed								
Drafting	History:						<i>u</i>		
Vers.	<u>Drafted</u>	Reviewed	Typed	Proofed	Submitted	<u>Jacketed</u>	Required		
/? /P1	phurley 01/23/2009 phurley 01/26/2009	wjackson 01/23/2009 kfollett 01/26/2009	phenry 01/24/2009	9	chanaman 01/25/2009		S&L		
/P2	phurley 01/27/2009	kfollett 01/28/2009	phenry 01/26/2009 mduchek 01/28/2009		lparisi 01/26/2009 sbasford 01/28/2009		S&L		

**LRB-1746** 01/29/2009 04:52:10 PM Page 2

Vers.	<u>Drafted</u>	Reviewed	Typed	Proofed	Submitted	<u>Jacketed</u>	Required
/P3	phurley 01/28/2009	kfollett 01/28/2009	phenry 01/28/2009		lparisi 01/28/2009		S&L
/P4	phurley 01/29/2009	kfollett 01/29/2009	mduchek 01/29/2009		lparisi 01/29/2009		

FE Sent For:

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**LRB-1746** 01/28/2009 03:20:17 PM Page 2

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# 2009 DRAFTING REQUEST

# Bill

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**LRB-1746** 01/28/2009 10:04:45 AM Page 2

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# 2009 DRAFTING REQUEST

Bill

Received: 01/23/2009				Received By: phurley					
Wanted: As time permits					Identical to LRB:				
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**LRB-1746** 01/26/2009 02:57:44 PM Page 2

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# 2009 DRAFTING REQUEST

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# 2009 DRAFTING REQUEST

Bill

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For: Ad	ministration-	-Budget		By/Representing	: Wavrunek			
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## Hurley, Peggy

From: Ozanne, Ismael R - DOC [Ismael.Ozanne@Wisconsin.gov]

Sent: Thursday, January 29, 2009 1:36 PM

To: Hurley, Peggy; Steinmetz, Jana D - DOA; Streveler, Anthony J - DOC

Cc: Wavrunek, Leah J - DOA; Silver, Karina B - DOA

Subject: RE: Misd Prob Supv LRB-1746

That is perfect. Thanks for the last min. changes.

From: Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]

Sent: Thursday, January 29, 2009 1:31 PM

To: Steinmetz, Jana D - DOA; Ozanne, Ismael R - DOC; Streveler, Anthony J - DOC

Cc: Wavrunek, Leah J - DOA; Silver, Karina B - DOA

Subject: RE: Misd Prob Supv LRB-1746

A couple of things. First, if you want to define "risk assessment," then the phrase "risk assessment" must be used somewhere in the statute. I suggest putting the definition in a new paragraph (a), and changing (b) to read "The department shall establish by rule a system for risk assessment that classifies a probationer's level of risk . . . " Does that make sense?

Also, in the definition of "risk assessment," I don't think you can use "assessing an offender's risk." I think that is a somewhat circular definition. I would suggest something like "the application of an objective instrument supported by research for the purpose of determining how likely an offender is to commit another offense."

The last section is fine, I'll model it after 938.51 (1) (b) and amend s. 950.04 (1v) (v). OK?

From: Steinmetz, Jana D - DOA [mailto:Jana.Steinmetz@Wisconsin.gov]

Sent: Thursday, January 29, 2009 1:04 PM

To: Ozanne, Ismael R - DOC; Streveler, Anthony J - DOC; Hurley, Peggy

Cc: Wavrunek, Leah J - DOA; Silver, Karina B - DOA

Subject: Misd Prob Supv LRB-1746

Importance: High

Peggy,

Please make the following changes to this draft:

973.10 (1g) (a) The department shall establish by rule a system for <del>categorizing</del> <u>classifying[s1]</u> a probationer's level of risk for committing another offense. The system established under this subsection <del>may</del> <u>shall</u> contain levels of risk[s2] <del>no fewer than 4 levels of risk</del>, with a person who poses the most risk classified at the highest level of risk.

- 1. The department classifies him or her under par. (a) at a high risk level the highest or 2nd highest level of risk.
- Include a definition of risk assessment.

"Risk assessment" means the application of an objective instrument supported by research for the purpose of assessing an offender's risk of re-offense.

Lastly, there should be a reference to current stat regarding notification to a victim, who has enrolled for notification, at the point when a decision is made that the person will not be supervised by the department. Maybe put it at the end of section (c)? and say "if the department is not allowed to supervise an offender for an offence in which a victim is involved the state shall send notice in accordance with CH 950".

I apologize for the lateness. Please let us know if you have any questions or concerns.

[s1] This is consistent with current literature and practice, and consistent with the draft language contained in Line 13 [s2]Using a validated instrument is and identifying those who are assessed as high risk is the key. Requiring a specific number of risk categories is inconsistent with current risk validation practices and research.

## 2009-11 Budget Bill Statutory Language Drafting Request

Topic: Misdemeanor Probation Supervision

Tracking Code: BB0514

SBO team: Agriculture, Environment and Justice

SBO analyst: Leah Wavrunek

• Phone: 267-0370

Email: leah.wavrunek@wisconsin.gov

Agency acronym: DOC

Agency number: 410

Priority (Low, Medium, High): High

Intent: Create a system for supervising <u>certain</u> offenders convicted of a misdemeanor and sentenced to probation by the courts.

Below is suggested language from the Department of Corrections:

- 973.18 --Risk Categories—Department must supervise specified offenders. (Effective until \_\_\_\_\_) [we may put in a sunset date]
  - (1) When the Department of Corrections performs a risk assessment pursuant to (\_\_\_\_\_\_), or to determine conditions of supervision, the risk assessment shall classify the offender or probationer sentenced in Circuit Court into one of at least 4 risk categories.

\*\*the risk assessment will be added as general language, perhaps in 973, to say that DOC will perform a risk assessment on offenders sentenced to custody or supervision by the department to determine if they qualify for probation supervision and what their needs are for a unified case plan.

- (2) The Department of Corrections shall supervise every offender sentenced to a term of probation, extended supervision, and every misdemeanor probationer ordered by the Circuit Court to probation under the supervision of the Department of Corrections pursuant to 973.09(1)(a)....
  - a. Whose risk assessment places that offender or probationer in one of the two highest risk categories; or
  - b. Regardless of the offender's or probationer's risk category if:
    - The offender's or probationer's current conviction or prior conviction is for:
      - A. A sex offense [may want to define by any person who may be required to register as a sex offender per s. 301.45(1d)(b)]
      - B. A violent offense (use the definition from the TAD program, s. 16.964(12).

- C. A crime against life and bodily security as specified in Ch 940
- D. a domestic violence offense as defined in Ch 968.075(1)
- E. A violation of 943.10(1m)(a) and (e) (burglary of a dwelling/motor home or trailer)
- F. A violation of, or an attempt, solicitation, or conspiracy to violate 961, by manufacture or deliver or possession with intent to deliver methamphetamine; Heroin; Cocaine (may add a specific amount for cocaine and THC)
- G. A violation of, or attempt, solicitation, or conspiracy to violate, s. 961.455, or 961.46 (using a child for illegal drug distribution or manufacturing purposes or distribution to persons under age 18)

(3)	The Department of Corrections is not authorized, to and may not, supervise any
-	offender sentenced to a term of probation unless the offender or probationer is
	one for whom supervision is required under subsection (2) of this section.
(4)	This section expires () [Sunset?]
` '	

Effective date: Retroactive to the start of Truth-in-Sentencing.

He to Least Small to - Dialt narrowly to only assess misd probs. - if ever armite listed offenses, Suprise

# Hurley, Peggy

To:

Ozanne, Ismael R - DOC; Steinmetz, Jana D - DOA; Streveler, Anthony J - DOC

Cc:

Wavrunek, Leah J - DOA; Silver, Karina B - DOA

Subject: RE: drafting questions

## Everyone:

Thank you for your responses. After talking to Jana, my understanding is that I should draft this bill quite narrowly, and only:

1. require DOC to conduct a risk assessment for each misdemeanant sentenced to probation.

- 2. forbid DOC to supervise a misdemeanant on probation UNLESS the person is in the top 2 tiers of risk OR falls into one of the listed categories.
- 3. leave DOC supervision of other people on probation, extended supervision, or parole as is.

It appears from your responses that the risk assessment that is needed for misdemeanants on probation is different from what is needed for other people entering the correctional system or for people being released after incarceration. Therefore, this draft will not establish a risk/needs assessment for anyone other than the risk assessment described above for misdemeanants on probation.

If you want a separate request that establishes/requires a risk/needs assessment for other offenders, please let me know. At this time, it is my understanding that DOA only wants a bill that addresses the supervision needs of misdemeanants released to probation. Please let me know if this is not correct.

Peggy

From: Ozanne, Ismael R - DOC [mailto:Ismael.Ozanne@Wisconsin.gov]

**Sent:** Friday, January 23, 2009 1:39 PM

To: Steinmetz, Jana D - DOA; Streveler, Anthony J - DOC; Hurley, Peggy

Cc: Wavrunek, Leah J - DOA; Silver, Karina B - DOA

Subject: RE: drafting questions

Peggy sorry for any confusion and thanks again for all your hard work. May best shot at answers to your questions.

- 1. DOC will run the risk assessment on all offenders who come to DOC, at intake for new arrivals and as soon as we can for those already with us, starting with those closest to release. So Parolees would also have a risk assessment run. The risk assessment for Misdemeanors would help determine if the DOC would supervise them or not. The risk assessment for all would also held determine what their unified case plane will be.
- 2. Risk assessment categories I believe will be the levels the assessment tool will put people in, and the levels will correlate to risk to offend (commit a new crime). Our tool will be a risk and needs tool so it will also let us now what treatment will be need and give us a ranking of what is the greatest need i.e. AODA treatment or DV counseling etc...
- 3. Good question. I think we wanted to include them all and the "attempt, solicitation, or conspiracy" language I believe is going towards drug specific crimes and the attempted murder would fall under the violent offense category.
- 4. The restriction for supervision should be worded only for misdemeanor probation at this time. I think there are some felonies that WA state doesn't supervise but we figured in WI we would supervise all felonies.

Not sure if this does it but feel free to call me. 240-5090

From: Steinmetz, Jana D - DOA

**Sent:** Friday, January 23, 2009 1:14 PM

**To:** Ozanne, Ismael R - DOC; Streveler, Anthony J - DOC **Cc:** Wavrunek, Leah J - DOA; Silver, Karina B - DOA

Subject: FW: drafting questions

Ish and Tony,

Please take a look at Peggy's questions ASAP.

- 1. I think we do not want a risk assessment on parolees because they already have a functioning mechanism for review through the current parole system, but I will defer to DOC.
- 2. The "risk categories" relate to the risk of reoffending, correct? Do you have a scale in mind or will this be in rule?
- 3. ???
  - 4. I think we talked about limiting this to misdemeanants, but I will defer to DOC. Also, again, parolees to assess or not assess?

**From:** Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]

Sent: Friday, January 23, 2009 12:57 PM

To: Steinmetz, Jana D - DOA

Subject:

Hi Jana,

- 1. I'm reviewing the materials you sent over. It appears that you want to require DOC to perform a risk assessment for each person who is put on probation or is released to extended supervision. Do you want to require a risk assessment for each person who is released to parole, too? The draft request doesn't mention parolees at all (see, for example, proposed s. 973.18 (2) note, there is already a s. 973.18, so I'll have to create this elsewhere in the statutes) but aren't parolees also under the supervision of the department?
- 2. I am a little unclear as to what "risk categories" are do you mean people at risk of reoffending? At risk to themselves? At risk of violating a term or condition of their probation or extended supervision? This idea may need some fleshing out. Does DOC already have some sort of scale in mind?
- 3. In the list of violations for which a person must be supervised, I am not sure why some include "attempt, solicitation, or conspiracy," and others do not, given that inchoate crimes are generally punished (see s. 939.30, 939.31, and 939.32). Do you really want to include someone convicted of, say, attempt to deliver heroin but not include someone convicted of attempt to commit murder?
- 4. The request asks that DOC be prohibited from supervising a person who is neither in the top 2 tiers of risk nor in one of the listed categories of offenders. Does this mean that there may be some felons released to extended supervision who are not subject to supervision at all? Sub. (3) of the requested language refers only to probationers but subs. (1) and (2) refer to persons placed on extended supervision, as well. And again, there is no mention of persons on parole; are they not to be supervised, or should they be assessed and subject to the same criteria as probationers and people on extended supervision?

Please let me know as soon as you can. I will probably have more questions when I begin to draft; I am not sure whether this request will make it into the budget or whether it will have to be added at the joint finance stage, but I will do my best to draft as quickly as I can.

Peggy

973.18Risk Categories—Department must supervise specified offenders.  (Effective until) [if we want to put in a sunset date]	
(1) When The Department of Corrections performs a risk assessment pursuant to (), or to determine conditions of supervision, the risk assessment shall classify the offender or probationer sentenced in Circuit Court into one of at least 4 risk categories.	Deleted: a persons  Deleted: (# of possible categories)
(2) The Department of Corrections shall supervise every offender sentenced to a term of probation, extended supervision, and every misdemeanor probationer ordered by the Circuit Court to probation under the supervision of The Department of Corrections pursuant to 973.09(1)(a) a. Whose risk assessment places that offender or probationer in one	The second secon
of the two highest risk categories; or b. Regardless of the offender's or probationer's risk category if: i. The offender's or probationer's current conviction or prior conviction is for:  A. A sex offense [may want to define by any person who may be required to register as a sex offender per s.	
301.45(1d)(b)]  B. A violent offense (use the definition from the TAD program see below)	Deleted: may want to
<ul> <li>C. A crime against life and bodily security as specified in Ch 940.</li> </ul>	<b>Deleted:</b> A felony (or should this just be
D. a domestic violence offense as defined in Ch	Deleted: n
968.075(1)	Deleted: )
E. A violation of 943.10(1m)(a) and (e) (burglary of a	Deleted: that is domestic violence
dwelling/motor home or trailer)  F. A violation of, or an attempt, solicitation, or conspiracy to violate 961, by manufacture or deliver or possession with intent to deliver methamphetamine; Heroin; Cocaine ( how specific? X amount?)  G. A violation of, or attempt, solicitation, or conspiracy to violate, s. 961.455, or 961.46 (using a child for illegal drug distribution or manufacturing purposes or distribution to persons under age 18)	Deleted: <#>The offender or probationer has a prior conviction for: \(^{1}\) <#>A sex offense [may want to define by any person who may be required to register as a sex offender per s. \(^{1}\) <#>301.45(1d)(b)]¶ **A violent offense (may want to use the definition from the TAD program see below)¶ **A crime against life and bodily security as specified in Ch 940 ¶ **A felony (or should this just be an offense) that is domestic violence as defined in Ch 968.075(1)¶
<ul> <li>(3) The Department of Corrections is not authorized, to and may not, supervise any offender sentenced to a term of probation unless the offender or probationer is one for whom supervision is required under subsection (2) of this section.</li> <li>(4) This section expires ( ) [Sunset? Regardless, this would be retroactive to start of Truth-in-Sentencing]</li> </ul>	<#>A violation of 943.10(1m)(a)(e) (burglary of a dwelling/motor home or trailer)¶ <#>A violation of, or an attempt, solicitation, or conspiracy to violate 961, by manufacture or deliver or possession with intent to deliver methamphetamine; Heroin; Cocaine (how specific?) ¶ <#>A violation of, or attempt, solicitation, or conspiracy to violate, s. 961.455, or 961.45 (using a child for illegal drug distribution or manufacturing purposes or distribution to persons under age 18)¶ Formatted: Bullets and Numbering

#### PROPOSED DEFINITION OF VIOLENT OFFENDER

The following legislative language is used to define a violent offender for eligibility to participate in the Treatment Alternative and Diversion (TAD) program. The context of this definition was taken from what has been used by the USDOJ for several grants and has been adopted by the National Association of Problem Solving Court Professionals.

## 16.964 (12)

- (a) In this subsection, "violent offender" means a person to whom one of the following applies:
- 1. The person has been charged with or convicted of an offense in a pending case and, during the course of the offense, the person carried, possessed, or used a dangerous weapon, the person used force against another person, or a person died or suffered serious bodily harm.
- 2. The person has one or more prior convictions for a felony involving the use or attempted use of force against another person with the intent to cause death or serious bodily harm.

This definition includes both current and historical offenses. Although this will reduce the number of eligible offenders, it does take into account previous acts of violence which is consistent with the literature regarding assessment of risk to commit a new violent act. Additionally, this definition takes into accounts the offender's behaviors when committing the crime. Many time what he/she was convicted of (statute-driven only) does not adequately reflect the person's behavior; and, in some cases, what the person is actually convicted of is the result of plea bargaining or read-ins. \(^1\)

## Current Sat: any person required to register as a Sex Offender

301.45(1d)(b)

(b) "Sex offense" means a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2) or (3), 944.06, 948.02 (1) or (2), 948.025,

Aggravating Factors for Sentencing 973.017(3)(e)1

<sup>&</sup>lt;sup>1</sup> Another reference:

a. The person caused bodily harm, great bodily harm, or death to another.

c. The person used force or violence or the threat of force or violence

948.05, 948.051, 948.055, 948.06, 948.07 (1) to (4), 948.075, 948.08, 948.085, 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and the person who committed the violation was not the victim's parent.

301.45 - ANNOT. <a href="http://www.legis.state.wi.us/statutes/Stat0301.pdf">http://www.legis.state.wi.us/statutes/Stat0301.pdf</a>
NOTE: Par. (b) is shown as affected by 2 acts of the 2007 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i).

301.45(1g) <a href="http://www.legis.state.wi.us/statutes/Stat0301.pdf">http://www.legis.state.wi.us/statutes/Stat0301.pdf</a> (1g) Who is covered. Except as provided in <a href="subs.(1m">subs.(1m</a>) and <a href="top:(1p)">(1p)</a>, a person shall comply with the reporting requirements under this section if he or she meets one or more of the following criteria:

301.45(1g)(a) <a href="http://www.legis.state.wi.us/statutes/Stat0301.pdf">http://www.legis.state.wi.us/statutes/Stat0301.pdf</a>
(a) Is convicted or adjudicated delinquent on or after December 25, 1993, for a sex offense.

301.45(1g)(b) <a href="http://www.legis.state.wi.us/statutes/Stat0301.pdf">http://www.legis.state.wi.us/statutes/Stat0301.pdf</a>
(b) Is in prison, a juvenile correctional facility, or a secured residential care center for children and youth or is on probation, extended supervision, parole, supervision, or aftercare supervision on or after December 25, 1993, for a sex offense.

301.45(1g)(bm) <a href="http://www.legis.state.wi.us/statutes/Stat0301.pdf">http://www.legis.state.wi.us/statutes/Stat0301.pdf</a> (bm) Is in prison, a juvenile correctional facility, or a secured residential care center for children and youth or is on probation, extended supervision, parole, supervision, or aftercare supervision on or after December 25, 1993, for a violation, or for the solicitation, conspiracy, or attempt to commit a violation, of a law of this state that is comparable to a sex offense.

301.45(1g)(c) <a href="http://www.legis.state.wi.us/statutes/Stat0301.pdf">http://www.legis.state.wi.us/statutes/Stat0301.pdf</a>
(c) Is found not guilty or not responsible by reason of mental disease or defect on or after December 25, 1993, and committed under <a href="https://example.com/statutes/Stat0301.pdf">s. 51.20</a> or <a href="https://example.com/statutes/Stat0301.pdf">971.17</a> for a sex offense.

301.45(1g)(d) <a href="http://www.legis.state.wi.us/statutes/Stat0301.pdf">http://www.legis.state.wi.us/statutes/Stat0301.pdf</a>
(d) Is in institutional care or on conditional transfer under s. 51.35 (1) or conditional release under s. 971.17 on or after December 25, 1993, for a sex offense.

301.45(1g)(dd) <a href="http://www.legis.state.wi.us/statutes/Stat0301.pdf">http://www.legis.state.wi.us/statutes/Stat0301.pdf</a> (dd) Is in institutional care or on conditional transfer under <a href="mailto:s.51.35">s.51.35</a> (1) or conditional release under <a href="mailto:s.571.17">s.571.17</a> on or after December 25, 1993, for a violation, or for the solicitation, conspiracy or attempt to commit a violation, of a law of this state that is comparable to a sex offense.

301.45(1g)(dh) http://www.legis.state.wi.us/statutes/Stat0301.pdf

- (dh) Is on parole, extended supervision, or probation in this state from another state under s. 304.13 (1m), 304.135, or 304.16 on or after December 25, 1993, for a violation, or for the solicitation, conspiracy, or attempt to commit a violation, of the law of another state that is comparable to a sex offense.
- 301.45(1g)(dj) http://www.legis.state.wi.us/statutes/Stat0301.pdf
- (dj) Is a juvenile in this state on or after May 9, 2000, and is on supervision in this state from another state pursuant to the interstate compact on the placement of juveniles under <u>s. 938.988</u> for a violation of a law of another state that is comparable to a sex offense.
- 301.45(1g)(dL) http://www.legis.state.wi.us/statutes/Stat0301.pdf
- (dL) Is placed on lifetime supervision under s. 939.615 on or after June 26, 1998.
- 301.45(1g)(dp) http://www.legis.state.wi.us/statutes/Stat0301.pdf
- (dp) Is in institutional care under, or on parole from, a commitment for specialized treatment under ch. 975 on or after December 25, 1993.
- 301.45(1g)(dt) http://www.legis.state.wi.us/statutes/Stat0301.pdf
- (dt) Is in institutional care or on supervised release under ch. 980 on or after June 2, 1994.
- 301.45(1g)(e) http://www.legis.state.wi.us/statutes/Stat0301.pdf
- (e) Is ordered by a court under <u>s. 51.20 (13) (ct) 1m.</u>, 938.34 (15m) (am), 938.345 (3), 971.17 (1m) (b) 1m. or 973.048 (1m) to comply with the reporting requirements under this section.
- 301.45(1g)(em) http://www.legis.state.wi.us/statutes/Stat0301.pdf
- (em) Was required to register under s. 301.45 (1) (a), 1997 stats., based on a finding that he or she was in need of protection or services and is ordered to continue complying with the requirements of this section by a court acting under 1999 Wisconsin Act 89, section 107 (1) (e).
- 301.45(1g)(f) http://www.legis.state.wi.us/statutes/Stat0301.pdf
- (f) On or after December 1, 2000, is registered as a sex offender in another state or is registered as a sex offender with the federal bureau of investigation under 42 USC 14072 and is a resident of this state, a student in this state or employed or carrying on a vocation in this state.
- 301.45(1g)(g) http://www.legis.state.wi.us/statutes/Stat0301.pdf
- (g) Has been found to have committed a sex offense by another jurisdiction and, on or after December 1, 2000, is a resident of this state, a student in this state or employed or carrying on a vocation in this state. This paragraph does not apply if 10 years have passed since the date on which the person was released from prison or placed on parole, probation, extended supervision or other supervised release for the sex offense.

State of WA language re Probation/ES supervision

When a court sentences an offender to a term of total confinement in the custody of the department for any of the offenses specified in this section, the court shall also sentence the offender to a term of community placement as provided in this section. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement imposed under this section.

## 973.01 Bifurcated sentence of imprisonment and extended supervision.

973.01(1)

(1) Bifurcated sentence required. Except as provided in <u>sub. (3)</u>, whenever a court sentences a person to imprisonment in the Wisconsin state prisons for a felony committed on or after December 31, 1999, or a misdemeanor committed on or after February 1, 2003, the court shall impose a bifurcated sentence under this section.

973.01(2)

(2) Structure of bifurcated sentences. A bifurcated sentence is a sentence that consists of a term of confinement in prison followed by a term of extended supervision under <u>s.</u> 302.113. The total length of a bifurcated sentence equals the length of the term of confinement in prison plus the length of the term of extended supervision. An order imposing a bifurcated sentence under this section shall comply with all of the following:

973.01(2)(a)

(a) Total length of bifurcated sentence. Except as provided in par. (c), the total length of the bifurcated sentence may not exceed the maximum period of imprisonment specified in s. 939.50 (3), if the crime is a classified felony, or the maximum term of imprisonment provided by statute for the crime, if the crime is not a classified felony, plus additional imprisonment authorized by any applicable penalty enhancement statutes.

973.01(2)(b)

(b) Confinement portion of bifurcated sentence. The portion of the bifurcated sentence that imposes a term of confinement in prison may not be less than one year and, except as provided in par. (c), is subject to whichever of the following limits is applicable:

973.01(2)(b)1.

1. For a Class B felony, the term of confinement in prison may not exceed 40 years.

973.01(2)(b)3.

3. For a Class C felony, the term of confinement in prison may not exceed 25 years.

973.01(2)(b)4.

4. For a Class D felony, the term of confinement in prison may not exceed 15 years.

973.01(2)(b)5.
5. For a Class E felony

5. For a Class E felony, the term of confinement in prison may not exceed 10 years.

973.01(2)(b)6m.

6m. For a Class F felony, the term of confinement in prison may not exceed 7 years and 6 months.

973.01(2)(b)7.

7. For a Class G felony, the term of confinement in prison may not exceed 5 years.

973.01(2)(b)8.

8. For a Class H felony, the term of confinement in prison may not exceed 3 years.

973.01(2)(b)9.

9. For a Class I felony, the term of confinement in prison may not exceed one year and 6 months.

973.01(2)(b)10.

10. For any crime other than one of the following, the term of confinement in prison may not exceed 75% of the total length of the bifurcated sentence:

973.01(2)(b)10.a.

a. A felony specified in subds. 1. to 9.

973.01(2)(b)10.b.

b. An attempt to commit a classified felony if the attempt is punishable under <u>s. 939.32</u> (1) (intro.).

973.01(2)(c)

(c) Penalty enhancement.

973.01(2)(c)1.

1. Subject to the minimum period of extended supervision required under <u>par. (d)</u>, the maximum term of confinement in prison specified in <u>par. (b)</u> may be increased by any applicable penalty enhancement statute. If the maximum term of confinement in prison specified in <u>par. (b)</u> is increased under this paragraph, the total length of the bifurcated sentence that may be imposed is increased by the same amount.

973.01(2)(c)2.

2. If more than one of the following penalty enhancement statutes apply to a crime, the court shall apply them in the order listed in calculating the maximum term of imprisonment for that crime:

973.01(2)(c)2.a.
a. Sections 939.621, 939.632, 939.645, 946.42 (4), 961.46, and 961.49.

973.01(2)(c)2.b.
b. Section 939.63.

973.01(2)(c)2.c.
c. Section 939.62 (1) or 961.48.

973.01(2)(d)

(d) Minimum and maximum term of extended supervision. The term of extended supervision may not be less than 25% of the length of the term of confinement in prison imposed under <u>par.</u> (b) and, for a classified felony, is subject to whichever of the following limits is applicable:

973.01(2)(d)1. 1. For a Class B felony, the term of extended supervision may not exceed 20 years.

973.01(2)(d)2. 2. For a Class C felony, the term of extended supervision may not exceed 15 years.

973.01(2)(d)3. 3. For a Class D felony, the term of extended supervision may not exceed 10 years.

973.01(2)(d)4. 4. For a Class E, F, or G felony, the term of extended supervision may not exceed 5 years.

973.01(2)(d)5.

5. For a Class H felony, the term of extended supervision may not exceed 3 years.

973.01(2)(d)6.
6. For a Class I felony, the term of extended supervision may not exceed 2 years.

973.01(3) (3) Not applicable to life sentences. If a person is being sentenced for a felony that is punishable by life imprisonment, he or she is not subject to this section but shall be sentenced under s. 973.014 (1g).

973.01(3g)
(3g) Earned release program eligibility. When imposing a bifurcated sentence under this section on a person convicted of a crime other than a crime specified in ch. 940 or s.

948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095, the court shall, as part of the exercise of its sentencing discretion, decide whether the person being sentenced is eligible or ineligible to participate in the earned release program under s. 302.05 (3) during the term of confinement in prison portion of the bifurcated sentence.

973.01(3m)

(3m) Challenge incarceration program eligibility. When imposing a bifurcated sentence under this section on a person convicted of a crime other than a crime specified in ch. 940 or s. 948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.085, or 948.095, the court shall, as part of the exercise of its sentencing discretion, decide whether the person being sentenced is eligible or ineligible for the challenge incarceration program under s. 302.045 during the term of confinement in prison portion of the bifurcated sentence.

973.01(4)

(4) No good time; extension or reduction of term of imprisonment. A person sentenced to a bifurcated sentence under  $\underline{\text{sub.}}(1)$  shall serve the term of confinement in prison portion of the sentence without reduction for good behavior. The term of confinement in prison portion is subject to extension under  $\underline{\text{s.}} 302.113$  (3) and, if applicable, to reduction under  $\underline{\text{s.}} 302.045$  (3m),  $\underline{302.05}$  (3) (c)  $\underline{2.}$  a.,  $\underline{302.113}$  (9g), or  $\underline{973.195}$  (1r).

973.01(5)

(5) Extended supervision conditions. Whenever the court imposes a bifurcated sentence under <u>sub.</u> (1), the court may impose conditions upon the term of extended supervision.

973.01(6)

(6) No parole. A person serving a bifurcated sentence imposed under <u>sub. (1)</u> is not eligible for release on parole under that sentence.

973.01(7)

(7) No discharge. The department of corrections may not discharge a person who is serving a bifurcated sentence from custody, control and supervision until the person has served the entire bifurcated sentence.

973.01(8)

(8) Explanation of sentence.

973.01(8)(a)

(a) When a court imposes a bifurcated sentence under this section, it shall explain, orally and in writing, all of the following to the person being sentenced:

973.01(8)(a)1.

1. The total length of the bifurcated sentence.

973.01(8)(a)2.



2. The amount of time the person will serve in prison under the term of confinement in prison portion of the sentence.

973.01(8)(a)3.



3. The amount of time the person will spend on extended supervision, assuming that the person does not commit any act that results in the extension of the term of confinement in prison under s. 302.113 (3).

973.01(8)(a)4.



4. That the amount of time the person must actually serve in prison may be extended as provided under <u>s. 302.113 (3)</u> and that because of extensions under <u>s. 302.113 (3)</u> the person could serve the entire bifurcated sentence in prison.

973.01(8)(a)5.



5. That the person will be subject to certain conditions while on release to extended supervision, and that violation of any of those conditions may result in the person being returned to prison, as provided under <u>s. 302.113 (9)</u>.

973.01(8)(ag)



(ag) If the court provides under  $\underline{\text{sub. (3g)}}$  that the person is eligible to participate in the earned release program under  $\underline{\text{s. 302.05 (3)}}$ , the court shall also inform the person of the provisions of  $\underline{\text{s. 302.05 (3) (c)}}$ .

973.01(8)(am)



(am) If the court provides under <u>sub. (3m)</u> that the person is eligible for the challenge incarceration program, the court shall also inform the person of the provisions of <u>s.</u> 302.045 (3m).

973.01(8)(b)



(b) The court's explanation under par. (a) 3. of a person's potential period of extended supervision does not create a right to a minimum period of extended supervision.

973.01 - ANNOT.



History: 1997 a. 283; 2001 a. 109; 2003 a. 33; 2005 a. 277; 2007 a. 116, 226.

973.01 - ANNOT.



While an offender must meet the eligibility requirements of s. 302.045 (2) to participate

in the challenge incarceration program the trial court must, pursuant to sub. (3m), also determine if the offender is eligible for the program, in the exercise of its sentencing discretion. State v. Steele, 2001 WI App 160, 246 Wis. 2d 744, 632 N.W.2d 112, 00-2864.

#### 973.01 - ANNOT.



The exercise of sentencing discretion requires the court to exercise its discretion to create a sentence within the range provided by the legislature that reflects the circumstances of the situation and the particular characteristics of the offender. The court must consider the gravity of the offense, the offender's character and the public's need for protection. The weight given to any factor is left to the trial court's discretion. State v. Steele, 2001 WI App 160, 246 Wis. 2d 744, 632 N.W.2d 112, 00-2864.

## 973.01 - ANNOT.



If a defendant makes a fraudulent representation to the court, which the court accepts and relies upon in granting a sentence, the court may later declare the sentence void, and double jeopardy does not bar a subsequently increased sentence. State v. Jones, 2002 WI App 208, 257 Wis. 2d. 163, 650 N.W.2d 844, <u>01-2969</u>.

## 973.01 - ANNOT.



A court may, in specific circumstances, consider credit for time spent in presentence custody as a factor in determining an appropriate sentence. Because the length of the defendant's presentence custody affected the time the defendant would actually spend in prison and the expected incarceration term impacted the circuit court's goal that the defendant receive sex offender treatment in an institutional setting while not remaining incarcerated longer than was necessary to receive treatment, presentence credit was appropriately considered. State v. Fenz, 2002 WI App 244, 258 Wis. 2d 281, 653 N.W.2d 280, 01-1434.

## 973.01 - ANNOT.



Previously existing rules governing sentencing discretion are not unconstitutional when applied to sentences imposed under this section. State v. Gallion, 2002 WI App 265, 258 Wis. 2d 473, 653 N.W.2d 284, 01-0051.

#### 973.01 - ANNOT.



Sub. (2) (c) does not authorize a sentencing court to impose any portion of a penalty enhancer as extended supervision. State v. Volk, 2002 WI App 274, 258 Wis. 2d 584, 654 N.W.2d 479, 01-3342.

973.01 - ANNOT.



Events subsequent to sentencing and relating to rehabilitation do not constitute a new sentencing factor justifying sentence modification. State v. Champion, 2002 WI App 267, 258 Wis. 2d 781, 654 N.W.2d 242, 01-1894.

## 973.01 - ANNOT.

Despite the failure to object, a defendant may be entitled to resentencing if the sentence was affected by a trial court's reliance on an improper factor. State v. Groth, 2002 WI App 299, 258 Wis. 2d 889, 655 N.W.2d 163, 01-3000.

# 973.01 - ANNOT.

When a statutory definition is available that provides a defendant with sufficient notice as to the expected course of conduct and an ascertainable standard for enforcement, the condition of extended supervision is not unconstitutionally vague. The definition of "dating relationship" in s. 813.12 (1) (ag) 1. provided the appellant an objective standard and adequate notice of when a condition applied that required her to introduce any person she was "dating" to her supervising agent. State v. Koenig, 2003 WI App 12, 259 Wis. 2d 833, 656 N.W.2d 499, 02-1076.

## 973.01 - ANNOT.

Calculation of confinement and extended supervision for the presumptive minimum for unclassified felonies under this section prior to February 1, 2003 amendments are discussed. State v. Cole, 2003 WI 59, 262 Wis. 2d 167, 663 N.W.2d 700, 02-0681.

## 973.01 - ANNOT.

Resentencing on convictions that remain intact after one or more counts in a multi-count case is vacated is not always required. When the vacated count does not affect the overall dispositional structure of the original sentence, resentencing on the remaining counts is unnecessary. State v. Church, 2003 WI 74, 262 Wis. 2d 678, 665 N.W.2d 141, 01-3100.

#### 973.01 - ANNOT.

Subs. (2) and (5) prohibit confinement in any facility as a condition of extended supervision. Absent express authority, a trial court cannot order confinement as a condition of extended supervision. State v. Larson, 2003 WI App 235, 268 Wis. 2d 162, 672 N.W.2d 322, 03-0019.

## 973.01 - ANNOT.

A penalty enhancer under s. 939.62 is not subject to bifurcation, nor is it to be added to

the underlying term of imprisonment. State v. Jackson 2004 WI 29, 270 Wis. 2d 113, 676 N.W.2d 872, <u>02-0947</u>.

## 973.01 - ANNOT.



Sub. (3m) allows a sentencing court to determine not only whether a defendant is eligible for the challenge incarceration program, but also to set a date of eligibility within the term of confinement in prison. State v. Lehman, 2004 WI App 59, 270 Wis. 2d 695, 677 N.W.2d 644, 03-1269.

#### 973.01 - ANNOT.



Requisite to a prima facie valid sentence is a statement by the trial judge detailing the reasons for selecting the particular sentence imposed. Circuit courts shall: 1) specify the objectives of the sentence on the record and identify the general objectives of greatest importance; 2) describe the facts relevant to those objectives and explain why the particular component parts of the sentence imposed advance the specified objectives; 3) identify the factors that were considered in arriving at the sentence and indicate how those factors fit the objectives and influence the decision. State v. Gallion, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197, 01-0051.

## 973.01 - ANNOT.



The sentence imposed shall call for the minimum amount of custody or confinement consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant. Probation should be the disposition unless confinement is necessary to protect the public, the offender needs correctional treatment available only in confinement, or it would unduly depreciate the seriousness of the offense. State v. Gallion, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197, 01-0051.

#### 973.01 - ANNOT.



The good character of a victim killed as the result of a crime is relevant to sentencing, but the court should not attempt to measure the relative value of the victim's life. Although there may be circumstances in which the court could weigh the positive contributions and worth of the victim in assessing the harm caused by the crime, it does not follow that there is a right to have a court consider that a victim was a terrible burden on society. State v. Gallion, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197, 01-0051.

## 973.01 - ANNOT.



A court, after giving consideration to the relevant sentencing factors, may give disproportionate or controlling weight to a single factor. Balancing the factors is for the trial court. Ordering a lengthy term of supervision in order to enable the defendant to

pay a sizeable restitution amount did not violate the right to equal protection. State v. Longmire, 2004 WI App 90, 272 Wis. 2d 759, 681 N.W.2d 354, 03-0300.

## 973.01 - ANNOT.

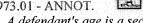
The defendant's life expectancy, coupled with a lengthy sentence, while perhaps guaranteeing that the defendant will spend the balance of his or her life in prison, does not have to be taken into consideration by the circuit court. If the circuit court chooses to consider a defendant's life expectancy, it must explain, on the record, how the defendant's life expectancy fits into the sentencing objectives. State v. Stenzel, 2004 WI App 181, 276 Wis. 2d 224, 688 N.W.2d 224, <u>03-2974</u>.

## 973.01 - ANNOT.



Consistent with Lehman, sub. (3g) allows a sentencing court to determine whether a defendant is eligible for the earned release program and a to set a date of eligibility within the term of confinement in prison. State v. White, 2004 WI App 237, 277 Wis. 2d 580, 690 N.W.2d 880, 04-1211

#### 973.01 - ANNOT.



A defendant's age is a secondary factor that the trial court may, but is not required, to consider in fashioning an appropriate sentence. The trial court, if it considers age, determines whether it should carry any weight. State v. Davis, 2005 WI App 98, 281 Wis. 2d 118, 698 N.W.2d 823, 04-1163.

## 973.01 - ANNOT.



A condition of extended supervision need not directly relate to the defendant's criminal conduct in the underlying conviction. Trial courts are granted broad discretion in determining conditions necessary for extended supervision subject only to a standard of reasonableness and appropriateness determined by how well the condition serves the dual goals of supervision: 1) rehabilitation of the defendant, and 2) protection of a state or community interest. A condition of extended supervision that the defendant maintain his child support payments was reasonable and appropriate. State v. Miller, 2005 WI App 114, 283 Wis. 2d 465, 701 N.W.2d 47, 04-1406

#### 973.01 - ANNOT.



A condition of extended supervision and probation that the defendant have no contact with the drug community as was not unconstitutionally overbroad or vague. When the trial court specifically told the defendant not be around any person when, or be in any place where, drugs are being possessed, used, or sold, the condition was clear and gave fair notice of what a drug community is. State v. Trigueros, 2005 WI App 112, 282 Wis. 2d 445, 701 N.W.2d 54, <u>04-1701</u>

#### 973.01 - ANNOT.



When a person is being sentenced after revocation of extended supervision, discretion can exist without an explicit delineation of the McCleary sentencing factors: 1) the gravity of the offense; (2) the character of the offender; and (3) the need to protect the public. There must be an indication that the court considered those factors. State v. Jones, 2005 WI App 259, 288 Wis. 2d 475, 707 N.W.2d 876, 05-0018

#### 973.01 - ANNOT.



A defendant who requests resentencing due to the circuit court's use of inaccurate information at the sentencing hearing must show both that the information was inaccurate and that there was actual reliance, not prejudicial reliance, on the inaccurate information by the court in the sentencing. Once actual reliance on inaccurate information is shown, the burden then shifts to the state to prove the error was harmless. State v. Tiepelman, 2006 WI 66, 291 Wis. 2d 179, 717 N.W.2d 1, 04-0914.

## 973.01 - ANNOT.



Gallion does not require that the trial court explain why it imposed three years as opposed to one or two. State v. Klubertanz, 2006 WI App 71, 291 Wis. 2d 751, 713 N.W.2d 116, 05-1256.

## 973.01 - ANNOT.



That test of whether the statutory language is capable of being understood by reasonably well-informed persons in two or more different ways is adopted for sentence construction disputes. As it looks for legislative intent when faced with an ambiguous statue, the appellate court should look for the trial court's sentencing intent when faced with an ambiguous oral sentencing pronouncement. The appellate court is required to determine the trial court's sentencing intent from other parts of the record, including the judgment of conviction. Without more, the bald recital of a consecutive sentence in the judgment of conviction is insufficient to overcome the presumption of a concurrent sentence. State v. Oglesby, 2006 WI App 95, 292 Wis. 2d 716, 715 N.W.2d 727, 05-1565.

### 973.01 - ANNOT.



Subs. (3g) and (3m) are not applicable to reconfinement under s. 302.119 (9) (am). State v. Hall, 2007 WI App 168, 304 Wis. 2d 504, 737 N.W.2d 13, <u>06-1439</u>.

#### 973.01 - ANNOT.



Sub. (5) does not require a sentencing court to make an ability-to-pay determination when the court orders a contribution payment as a condition of extended supervision.

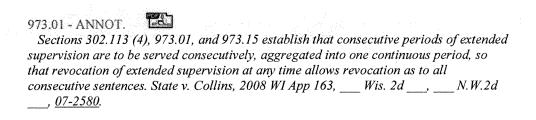
Neither the requirement that an ability-to-pay determination be made when a contribution surcharge is taxed against a defendant under s. 973.06 (1) or when a contribution surcharge is imposed as a condition of probation under s. 973.09 (1x) applies to sub. (5). State v. Galvan, 2007 WI App 173, 304 Wis. 2d 466, 736 N.W.2d 890, 06-2052.

# 973.01 - ANNOT. **造**

A fine that an offender has the ability to pay may satisfy sentencing objectives the trial court has found to be material and relevant to the particular defendant. A trial court is not required to explain the reason for a specific amount of a fine, but some explanation of why the court imposes a fine is required. If the sentencing court intends to impose a fine, the court must determine at the time of sentencing whether a defendant has the ability to pay a fine during the total sentence. The standard for imposing a fine, which is part of the punishment, should require no less consideration of the defendant's ability to pay than is required as part of an order of restitution. State v. Ramel, 2007 WI App 271, 306 Wis. 2d 654, 743 N.W.2d 502, 07-0355.

973.01 - ANNOT.			
A defendant has a due process righ			<b>D</b> .
State v. Payette, 2008 WI App 106, _	Wis. 2d,	N.W.2d_	, <u>07-1192</u> .

973.01 - ANNOT. The circuit court had the authority to order the defendant to reimburse his mother for forfeited bail his mother paid, either as restitution or as a condition of extended supervision. State v. Agosto, 2008 WI APP 149, \_\_\_ Wis. 2d \_\_\_, \_\_ N.W.2d \_\_\_, 06-2646.



973.01 - ANNOT. Truth-In-Sentencing Comes to Wisconsin. Brennan & Latorraca. Wis. Law. June 2000.

973.01 - ANNOT. Fully Implementing Truth-In-Sentencing. Hammer & Latorraca. Wis. Law. N

#### 973.09 Probation.

973.09(1)



(1)

973.09(1)(a)

(a) Except as provided in par. (c) or if probation is prohibited for a particular offense by statute, if a person is convicted of a crime, the court, by order, may withhold sentence or impose sentence under s. 973.15 and stay its execution, and in either case place the person on probation to the department for a stated period, stating in the order the reasons therefor. The court may impose any conditions which appear to be reasonable and appropriate. The period of probation may be made consecutive to a sentence on a different charge, whether imposed at the same time or previously. If the court imposes a term of probation under sub. (2) (a) 1. or 2. or (b) 2., it shall place its reasons for doing so on the record.

973.09(1)(b)

(b) If the court places the person on probation, the court shall order the person to pay restitution under <u>s. 973.20</u>, unless the court finds there is substantial reason not to order restitution as a condition of probation. If the court does not require restitution to be paid to a victim, the court shall state its reason on the record. If the court does require restitution, it shall notify the department of justice of its decision if the victim may be eligible for compensation under <u>subch</u>. I of ch. 949.

973.09(1)(c)

(c) When a person is convicted of any crime which is punishable by life imprisonment, the court shall not place the person on probation.

973.09(1)(d)

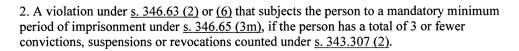
(d) If a person is convicted of an offense that provides a mandatory or presumptive minimum period of one year or less of imprisonment, a court may place the person on probation under <u>par. (a)</u> if the court requires, as a condition of probation, that the person be confined under <u>sub. (4)</u> for at least that mandatory or presumptive minimum period. The person is eligible to earn good time credit calculated under <u>s. 302.43</u> regarding the period of confinement. This paragraph does not apply if the conviction is for any of the following:

973.09(1)(d)1.

1. A violation under <u>s. 346.63 (1)</u> that subjects the person to a mandatory minimum period of imprisonment under <u>s. 346.65 (2) (am) 2.</u> or <u>3.</u>

973.09(1)(d)2.





973.09(1)(d)3.

3. A violation under <u>s. 346.63 (5)</u> that subjects the person to a mandatory minimum period of imprisonment under <u>s. 346.65 (2j) (am) 3.</u>, if the person has a total of 3 or fewer convictions, suspensions or revocations counted under <u>s. 343.307 (2)</u>.

973.09(1)(e)

(e) The court may impose a sentence under  $\underline{s. 973.032}$ , stay its execution and place the person on probation. A court may not provide that a condition of any probation involves participation in the intensive sanctions program.

973.09(1g)

(1g) If the court places the person on probation, the court may require, upon consideration of the factors specified in s. 973.20 (13) (a) 2. to 5., that the probationer reimburse the county or the state, as applicable, for any costs for legal representation to the county or the state for the defense of the case. In order to receive this reimbursement, the county or the state public defender shall provide a statement of its costs of legal representation to the defendant and court within the time period set by the court.

973.09(2)

(2) The original term of probation shall be:

973.09(2)(a)

(a)

973.09(2)(a)1.

1. Except as provided in <u>subd. 2.</u>, for any of the following misdemeanors, not less than 6 months nor more than 2 years:

973.09(2)(a)1.a.

a. A misdemeanor that the defendant committed while possessing a firearm.

973.09(2)(a)1.b. 置む

b. A misdemeanor that was an act of domestic abuse, as defined in s. 968.075 (1) (a).

973.09(2)(a)1.c.

c. A misdemeanor under s. 940.225 (3m) or ch. 948.

973.09(2)(a)1.d.

d. A misdemeanor under <u>s. 23.33 (4c)</u> or <u>(4p) (e)</u>, <u>30.681</u>, <u>30.684 (5)</u>, <u>350.101</u>, <u>350.104</u> (5), or <u>350.17</u> or a misdemeanor under <u>s. 346.63</u> to which <u>s. 973.09 (1) (d)</u> applies.

973.09(2)(a)1m.

1m. Except as provided in <u>subd. 2.</u>, for Class A misdemeanors not covered by <u>subd. 1.</u>, not less than 6 months nor more than one year.

973.09(2)(a)1r.

1r. Except as provided in <u>subd. 2.</u>, for misdemeanors not covered by <u>subd. 1.</u> or <u>1m.</u>, not more than one year.

973.09(2)(a)2.



2. If the probationer is convicted of not less than 2 nor more than 4 misdemeanors at the same time, the maximum original term of probation may be increased by one year. If the probationer is convicted of 5 or more misdemeanors at the same time, the maximum original term of probation may be increased by 2 years.

973.09(2)(b)



(b)

973.09(2)(b)1.



1. Except as provided in <u>subd. 2.</u>, for felonies, not less than one year nor more than either the maximum term of confinement in prison for the crime or 3 years, whichever is greater.

973.09(2)(b)2.



2. If the probationer is convicted of 2 or more crimes, including at least one felony, at the same time, the maximum original term of probation may be increased by one year for each felony conviction.

973.09(2m)



(2m) If a court imposes a term of probation in excess of the maximum authorized by statute, the excess is void and the term of probation is valid only to the extent of the maximum term authorized by statute. The term is commuted without further proceedings.

973.09(3)



**(3)** 

973.09(3)(a)



(a) Prior to the expiration of any probation period, the court, for cause and by order, may extend probation for a stated period or modify the terms and conditions thereof.

973.09(3)(b)



(b) The department shall notify the sentencing court, any person to whom unpaid restitution is owed and the district attorney of the status of the ordered restitution payments unpaid at least 90 days before the probation expiration date. If payment as

ordered has not been made, the court shall hold a probation review hearing prior to the expiration date, unless the hearing is voluntarily waived by the probationer with the knowledge that waiver may result in an extension of the probation period or in a revocation of probation. If the court does not extend probation, it shall issue a judgment for the unpaid restitution and direct the clerk of circuit court to file and enter the judgment in the judgment and lien docket, without fee, unless it finds that the victim has already recovered a judgment against the probationer for the damages covered by the restitution order. If the court issues a judgment for the unpaid restitution, the court shall send to the person at his or her last-known address written notification that a civil judgment has been issued for the unpaid restitution. The judgment has the same force and effect as judgments entered under s. 806.10.

973.09(3)(bm) (bm)



973.09(3)(bm)1.



1. At least 90 days before the expiration date of a probationer's period of probation, the department may notify the sentencing court and the district attorney that a probationer owes unpaid fees to the department under  $\underline{s.304.074}$ .

973.09(3)(bm)2.



2. Upon receiving notice from the department under <u>subd. 1.</u>, the court shall schedule a probation review hearing to be held before the expiration date of the period of probation unless the probationer either pays the fees before the scheduled hearing date or voluntarily waives the hearing. A waiver of a probation review hearing under this subdivision shall include an acknowledgement by the probationer that waiver may result in an extension of the probation period, a modification of the terms and conditions of probation or a revocation of probation.

973.09(3)(bm)3.



3. At a probation review hearing under  $\underline{\text{subd. 2.}}$ , the department has the burden of proving that the probationer owes unpaid fees under  $\underline{\text{s. }304.074}$  and the amount of the unpaid fees. If the department proves by a preponderance of the evidence that the probationer owes unpaid fees under  $\underline{\text{s. }304.074}$ , the court may, by order, extend the period of probation for a stated period or modify the terms and conditions of probation.

973.09(3)(bm)4.



4. If the court does not extend or modify the terms of probation under  $\underline{\text{subd. 3.}}$ , it shall issue a judgment for the unpaid fees and direct the clerk of circuit court to file and enter the judgment in the judgment and lien docket, without fee. If the court issues a judgment for the unpaid fees, the court shall send to the department a written notification that a civil judgment has been issued for the unpaid fees. The judgment has the same force and effect as judgments entered under  $\underline{\text{s. 806.10}}$ .

973.09(3)(c)

(c) Any of the following may constitute cause for the extension of probation:

973.09(3)(c)1.

1. The probationer has not made a good faith effort to discharge court-ordered payment obligations or to pay fees owed under s. 304.074.

973.09(3)(c)2.

2. The probationer is not presently able to make required restitution payments and the probationer and the person to whom restitution is owed consent to the performance of community service work under sub. (7m) in satisfaction of restitution ordered for that person, for which an extended period of probation is required.

973.09(3)(c)3.



3. The probationer stipulates to the extension of supervision and the court finds that extension would serve the purposes for which probation was imposed.

973.09(4)



**(4)** 

973.09(4)(a)



(a) The court may also require as a condition of probation that the probationer be confined during such period of the term of probation as the court prescribes, but not to exceed one year. The court may grant the privilege of leaving the county jail, Huber facility, work camp, or tribal jail during the hours or periods of employment or other activity under s. 303.08 (1) while confined under this subsection. The court may specify the necessary and reasonable hours or periods during which the probationer may leave the jail. Huber facility, work camp, or tribal jail or the court may delegate that authority to the sheriff. In those counties without a Huber facility under s. 303.09, a work camp under s. 303.10, or an agreement under s. 302.445, the probationer shall be confined in the county jail. In those counties with a Huber facility under s. 303.09, the sheriff shall determine whether confinement under this subsection is to be in that facility or in the county jail. In those counties with a work camp under s. 303.10, the sheriff shall determine whether confinement is to be in the work camp or the county jail. The sheriff may transfer persons confined under this subsection between a Huber facility or a work camp and the county jail. In those counties with an agreement under s. 302.445, the sheriff shall determine whether a person who is confined under this subsection but who is not subject to an order under par. (b) is to be confined in the tribal jail or the county jail, unless otherwise provided under the agreement. In those counties, the sheriff may transfer persons confined under this subsection between a tribal jail and a county jail, unless otherwise provided under the agreement.

973.09(4)(b)



(b) With the consent of the department and when recommended in the presentence

investigation, the court may order that a felony offender subject to this subsection be confined in a facility located in the city of Milwaukee under <u>s. 301.13</u> or <u>301.16 (1q)</u>, for the purpose of allowing the offender to complete an alcohol and other drug abuse treatment program.

973.09(4)(c)

(c) While subject to this subsection, the probationer is subject to <u>s. 303.08 (1)</u>, <u>(3)</u> to <u>(6)</u>, <u>(8)</u> to <u>(12)</u>, and <u>(14)</u> or to <u>s. 303.10</u>, whichever is applicable, to all the rules of the facility to which the probationer is confined, and to the discipline of the department, if confined to a facility under <u>par. (b)</u>, or the sheriff.

973.09(4m)

(4m) The department shall inform each probationer who is disqualified from voting under s. 6.03 (1) (b) that he or she may not vote in any election until his or her civil rights are restored. The department shall use the form designed under s. 301.03 (3a) to inform the probationer, and the probationer and a witness shall sign the form.

973.09(5)

(5) When the period of probation for a probationer has expired, the probationer shall be discharged from probation and the department shall do all of the following:

973.09(5)(a)

(a) If the probationer was placed on probation for a felony, issue the probationer one of the following:

973.09(5)(a)1.

1. A certificate of discharge from probation for the felony for which he or she was placed on probation if, at the time of discharge, the probationer is on probation or parole for another felony.

973.09(5)(a)2.

2. A certificate of final discharge if, at the time of discharge, the probationer is not on probation or parole for another felony. A certificate of final discharge under this subdivision shall list the civil rights which have been restored to the probationer and the civil rights which have not been restored to the probationer.

973.09(5)(b)

(b) If the probationer was placed on probation for a misdemeanor, notify the probationer that his or her period of probation has expired.

973.09(5)(c)

(c) In all cases, notify the court that placed the probationer on probation that the period of probation has expired.

973.09(7m) **(7m)** 

-C-

973.09(7m)(a)



(a) Except as provided in <u>s. 943.017 (3)</u>, the court may require as a condition of probation that the probationer perform community service work for a public agency or a nonprofit charitable organization. The number of hours of work required may not exceed what would be reasonable considering the seriousness of the offense and any other offense which is read into the record at the time of conviction. An order may only apply if agreed to by the probationer and the organization or agency. The court shall ensure that the probationer is provided a written statement of the terms of the community service order and that the community service order is monitored. If the court requires the conditions provided in this subsection and <u>sub. (4)</u>, the probationer reduces the period of confinement under <u>sub. (4)</u> at a rate of one day for each 3 days of work performed. A day of work equals 8 hours of work performed.

973.09(7m)(b)



(b) Any organization or agency acting in good faith to which a probationer is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the probationer.

973.09 - ANNOT.



**History:** 1971 c. 298; 1979 c. 119, 189, 238, 355, 356; 1981 c. 50, 88, 326, 352, 391; 1983 a. 27, 104, 254, 346, 519, 538; 1985 a. 150; 1987 a. 347, 398, 403, 412; 1989 a. 31, 121, 188; 1991 a. 39; 1993 a. 48, 486; 1995 a. 24, 224, 281; 1997 a. 27, 41, 289; 1999 a. 9, 58, 69, 186; 2001 a. 16, 104, 109; 2003 a. 33, 121, 139, 141; 2005 a. 25, 149, 451; 2007 a. 20, 84.

973.09 - ANNOT.



**Judicial Council Note, 1981:** A cross-reference to s. 973.15 has been inserted to clarify that the provisions of that statute govern the imposition of sentence even though the court stays execution of the sentence under this statute. [Bill 341-A]

973.09 - ANNOT.



Judicial Council Note, 1987: Sub. (1g) is amended to require the court to consider the defendant's ability to pay when ordering reimbursement of the costs of legal representation.

973.09 - ANNOT.



Sub. (3) (c) specifies grounds for extending probation. The availability of a civil

judgment for unpaid restitution enforceable by the victim under s. 973.20 (1), stats., substantially reduces the necessity of extending probation solely for the purpose of enforcing court-ordered payments, a practice of questionable cost-effectiveness. See legislative audit bureau report No. 85-10, April 15, 1985, at 17-18. Probation may, however, be extended upon stipulation of the defendant, to enforce community service in satisfaction of restitution, or when the probationer has not made a good faith effort to make restitution or other payments. Huggett v. State, 83 Wis. 2d 790, 803 (1978). [87 Act 398]

## 973.09 - ANNOT.



The terminology of work-release under sub. (4) and Huber law privileges under s. 56.08 [now s. 303.08] cannot be used interchangeably without the danger of an inappropriate sentence. Yingling v. State, 73 Wis. 2d 438, 243 N.W.2d 420 (1976).

## 973.09 - ANNOT.



Claims of credit for pretrial or preconviction incarceration may be made only as to sentences imposed, and not to periods of confinement during nonworking hours imposed as a condition of probation under sub. (4). Full confinement for one year as a condition of probation is not authorized under sub. (4). State v. Gloudemans, 73 Wis. 2d 514, 243 N.W.2d 220 (1976).

#### 973.09 - ANNOT.



A probation condition that the probationer not contact her codefendant fiance was a permissible infringement of her constitutional rights because the condition was reasonably related to rehabilitation and was not overly broad. Edwards v. State, 74 Wis. 2d 79, 246 N.W.2d 109 (1976).

#### 973.09 - ANNOT.



Failure to make restitution is not cause for extending probation under sub. (3) if the probationer demonstrates good faith effort to pay but lacks the capacity to do so during probation. Huggett v. State, 83 Wis. 2d 790, 266 N.W.2d 403 (1978).

### 973.09 - ANNOT.



An order to pay restitution, in an amount to be determined later, authorized collection of funds from the defendant. Thieme v. State, 96 Wis. 2d 98, 291 N.W.2d 474 (1980).

#### 973.09 - ANNOT.



Remand for resentencing was the proper procedure when the trial court improperly

imposed a period of probation to run concurrently with a period of parole. State v. Givens, 102 Wis. 2d 476, 307 N.W.2d 178 (1981).

973.09 - ANNOT.

Issuance of a warrant during a probationary term tolls the running of the term. State ex rel. Cox v. DHSS, 105 Wis. 2d 378, 314 N.W.2d 148 (Ct. App. 1981).

973.09 - ANNOT.

In setting restitution, the court must consider the probationer's resources and future ability to pay. State v. Pope, 107 Wis. 2d 726, 321 N.W.2d 359 (Ct. App. 1982).

973.09 - ANNOT.

There was a denial of due process in revoking probation without notice of the total extent and nature of the alleged violations of probation. State ex rel. Thompson v. Riveland, 109 Wis. 2d 580, 326 N.W.2d 768 (1982).

973.09 - ANNOT.

Reimposition of a sentence after a defendant had been placed on probation, absent violation of a probation condition, violated the double jeopardy clause. State v. Dean, 111 Wis. 2d 361, 330 N.W.2d 630 (Ct. App. 1983).

973.09 - ANNOT.

The court erred in imposing consecutive terms of probation. Increased punishment on resentencing did not violate double jeopardy protections. State v. Pierce, 117 Wis. 2d 83, 342 N.W.2d 776 (Ct. App. 1983). See also State v. Gereaux, 114 Wis. 2d 110, 338 N.W.2d 118 (Ct. App. 1983).

973.09 - ANNOT.

When probation was conditioned on the defendant's voluntary commitment to a mental hospital, but the hospital refused admittance, the court properly modified the original sentence by imposing a new sentence of 3 years' imprisonment. Double jeopardy was not violated. State v. Sepulveda, 120 Wis. 2d 231, 353 N.W.2d 790 (1984).

973.09 - ANNOT.

A court may not assess the cost of a special prosecutor as a condition of probation. State v. Amato, 126 Wis. 2d 212, 376 N.W.2d 75 (Ct. App. 1985).

## 973.09 - ANNOT.



A court may order a defendant to reimburse the police for funds used for a drug purchase that resulted in the conviction. State v. Connelly, 143 Wis. 2d 500, 421 N.W.2d 859 (Ct. App. 1988).

## 973.09 - ANNOT.



A lack of counsel at a probation revocation hearing does not deny the probationer's constitutional rights if the probationer does not face the loss of liberty. State v. Hardwick, 144 Wis. 2d 54, 422 N.W.2d 922 (Ct. App. 1988.)

### 973.09 - ANNOT.



Sub. (1) (b) does not restrict a court's authority to condition probation on any reasonable and appropriate requirement under sub. (1) (a). State v. Heyn, 155 Wis. 2d 621, 456 N.W.2d 157 (1990).

#### 973.09 - ANNOT.



Sub. (3) (a) authorizes a court to modify all conditions of probation established for a specific probationer, including those imposed by the corrections department. State ex rel. Taylor v. Linse, 161 Wis. 2d 719, 469 N.W.2d 201 (Ct. App. 1991).

### 973.09 - ANNOT.



A plea agreement to amend a judgment of conviction upon successful completion of probation is not authorized by statute. State v. Hayes, 167 Wis. 2d 423, 481 N.W.2d 699 (Ct. App. 1992).

#### 973.09 - ANNOT.



Probationers at a hearing to modify probation are entitled: 1) to notice of the hearing and the reasons for the requested change; 2) to be present; 3) to cross-examine and present witnesses; 4) to have conditions modified based on correct information; and 5) to counsel, if jail confinement is possible. State v. Hayes, 173 Wis. 2d 439, 496 N.W.2d 645 (Ct. App. 1992).

## 973.09 - ANNOT.



Requiring a convicted defendant to deposit money for possible future counselling costs of victims was impermissible. State v. Handley, 173 Wis. 2d 838, 496 N.W.2d 725 (Ct. App. 1993).

973.09 - ANNOT.



Requiring a defendant convicted of sexual assault to pay a victim's costs of tuition to attend another school to avoid harassment that arose after the assault was a reasonable condition of probation. State v. Brown, 174 Wis. 2d 550, 497 N.W.2d 463 (Ct. App. 1993).

973.09 - ANNOT.



A condition of probation not related to the underlying conviction but related to prior convictions was reasonable and appropriate. State v. Miller, 175 Wis. 2d 204, N.W.2d (Ct. App. 1993).

973.09 - ANNOT.



The notification provisions of sub. (3) apply only in the case of probation extension proceedings, not revocations. Bartus v. DHSS, 176 Wis. 2d 1063, 501 N.W.2d 419 (1993).

973.09 - ANNOT.



Sub. (2) (a) applies to probation for misdemeanors and sub. (2) (b) to felonies; sub. (2) (b) 2. does not authorize increasing probation for a misdemeanor if the defendant is convicted of a felony at the same time. State v. Reagles, 177 Wis. 2d 168, 501 N.W.2d 861 (Ct. App. 1993).

973.09 - ANNOT.



A forced confession as a condition of probation does not violate the right against self-incrimination. The constitution protects against the use of confessions in subsequent criminal prosecutions, but does not protect against the use of such statements in a revocation proceeding. State v. Carrizales, 191 Wis. 2d 85, 528 N.W.2d 29 (Ct. App. 1995).

973.09 - ANNOT.



While time served due to an indigent's inability to post bail prior to trial must be credited as time served on a prison sentence imposed, a court need not credit that time against probationary confinement. State v. Avila, 192 Wis. 2d 870, 532 N.W.2d 423 (Ct. App. 1995).

973.09 - ANNOT.



A jail term probationer eligible for good time credit under sub. (1) (d) may not be

denied the possibility of earning good time as a sentence condition. State v. McClinton, 195 Wis. 2d 344, 536 N.W.2d 413 (Ct. App. 1995), 94-0747.

## 973.09 - ANNOT.

A trial court in exercising sentencing discretion is not prohibited from entertaining general predispositions based on experience, but the judge's predispositions may never be so specific as to ignore the particular circumstances of the individual offender. State v. Ogden, 199 Wis. 2d 566, 544 N.W.2d 574 (1996), 94-1485.

## 973.09 - ANNOT.



A court was authorized to order a defendant to pay the cost of DNA testing by a private laboratory as a condition of probation. State v. Beiersdorf, 208 Wis. 2d 492, 561 N.W.2d 749 (Ct. App. 1997), 95-1234.

## 973.09 - ANNOT.



A condition of probation placed on a sex offender that he not engage in a sexual relationship without first discussing it with his agent and obtaining his agent's approval did not unreasonably restrict the probationer's constitutional rights of privacy. Krebs v. Schwartz, 212 Wis. 2d 127, 568 N.W.2d 26 (Ct. App. 1997), 96-2596.

#### 973.09 - ANNOT.



An unfulfilled condition of probation does not automatically extend the probation period; an extension must be obtained. If the probation has not been stayed and the probation period has been served, the probationer is entitled to discharge even in the face of an unfulfilled condition of probation; at that point the trial court loses jurisdiction. State v. Stefanovic, 215 Wis. 2d 310, 572 N.W.2d 140 (Ct. App. 1997), 97-1791.

## 973.09 - ANNOT.



A conviction following an Alford plea of no contest under which the defendant does not admit guilt, does not prevent imposing as a condition of probation that the defendant complete a treatment program that requires acknowledging responsibility for the crime that resulted in the conviction. The imposition of the condition does not violate the defendant's due process rights. State ex rel. Warren v. Schwarz, 219 Wis. 2d 615, 579 N.W.2d 698 (1998), 96-2441.

#### 973.09 - ANNOT.



When a court orders probation under sub. (1) (d), it lacks authority to order monitored

home detention in lieu of confinement under sub. (4). State v. Eastman, 220 Wis. 2d 330, 582 N.W.2d 749 (Ct. App. 1998), 97-2173.

973.09 - ANNOT.



The 90-day notice requirement in sub. (3) (b) is directory, not mandatory. The extension of probation for the sole purpose of collecting a debt, when the record contained substantial reasons not to extend, was an abuse of discretion. State v. Olson, 222 Wis. 2d 283, 588 N.W.2d 256 (Ct. App. 1998), 98-0201.

973.09 - ANNOT.



Sub. (3) (a) allows circuit courts to modify conditions of probation at any time before the period of probation expires, even before the period of probation begins. State v. Gray, 225 Wis. 2d 39, 590 N.W.2d 918 (1999), 96-3363.

973.09 - ANNOT.



The court has broad discretion to fashion appropriate conditions of probation in each individual case. The validity of conditions of probation are tested by how well they serve the goals of rehabilitation and protection of the public. State v. Simonetto, 2000 WI App 17, 232 Wis. 2d 315, 606 N.W.2d 275, 99-0486.

973.09 - ANNOT.



A probationer has the right to refuse probation not only when it is first granted but at any time while serving it. State v. McCready, 2000 WI App 68, 234 Wis. 2d 110, 608 N.W.2d 762, 99-1822.

973.09 - ANNOT.



The trial court exceeded its authority in authorizing a probation agent to decide whether to require the defendant to serve three months in jail that the court ordered as a part of probation and then stayed. State v. Fearing, 2000 WI App 229, 239 Wis. 2d 105, 619 N.W.2d 115, 99-2849.

973.09 - ANNOT.



Generally, neither probation or imprisonment as a condition of probation is considered to be a sentence. As such a person confined as a condition of probation cannot earn good time. State v. Fearing, 2000 WI App 229, 239 Wis. 2d 105, 619 N.W.2d 115, 99-2849.

973.09 - ANNOT.



Corroboration of a confession is not required for the confession to be used as the basis

of a revocation of probation. The appropriate test for admission of the confession is that it must carry sufficient indicia of reliability that the fact finder can rely upon to support the conclusion that revocation is appropriate and necessary. State ex rel. Washington v. Schwarz, 2000 WI App 235, 239 Wis. 2d 443, 620 N.W.2d 414, 00-0004.

## 973.09 - ANNOT.

Sentencing a defendant to consecutive terms of probation is not authorized. State v. Schwebke, 2001 WI App 99, 242 Wis. 2d 585, 627 N.W.2d 213, 99-3204. Affirmed on other grounds, 2002 WI 55, 253 Wis. 2d 1, 644 N.W.2d 666, 99-3204.

#### 973.09 - ANNOT.



There is no statutory authority to order, as a condition of probation, payment of restitution obligations in a separate criminal case. State v. Torpen, 2001 WI App 273, 248 Wis. 2d 951, 637 N.W.2d 481, 01-0182.

#### 973.09 - ANNOT.



Probation is permitted under sub. (1) (d) for 4th and subsequent OWI violations as long as the probation requires confinement for at least the mandatory minimum time period under s. 346.65. State v. Eckola, 2001 WI App 295, 249 Wis. 2d 276, 638 N.W.2d 903, 01-1044.

## 973.09 - ANNOT.



Revocation hearing examiners must specifically find that good cause exists for not allowing confrontation of adverse witnesses, but failure to do so does not require automatic reversal. Good cause should generally be based upon a balancing of the need of the probationer in cross-examining the witness and the interest of the state in denying confrontation, including consideration of the reliability of the evidence and the difficulty, expense, or other barriers to obtaining live testimony. State ex rel. Simpson v. Schwarz, 2002 WI App 7, 250 Wis. 2d 214, 640 N.W.2d 527, 01-0008.

#### 973.09 - ANNOT.



The right against self-incrimination survives conviction and remains active while a direct appeal is pending. A probationer may be compelled to answer self-incriminating questions from a probation or parole agent, or suffer revocation for refusing to do so, only if there is a grant of immunity rendering the testimony inadmissible in a criminal prosecution. State ex rel. Tate v. Schwarz, 2002 WI 127, 257 Wis. 2d 40, 654 N.W.2d 438, 00-1635.

973.09 - ANNOT.



When a statutory definition is available that provides a defendant with sufficient notice as to the expected course of conduct and an ascertainable standard for enforcement, the condition is not unconstitutionally vague. The definition of "dating relationship" in s. 813.12 (1) (ag) 1. provided the appellant an objective standard and adequate notice of when a condition applied that required her to introduce any person she was "dating" to her supervising agent. State v. Koenig, 2003 WI App 12, 259 Wis. 2d 833, 656 N.W.2d 499, 02-1076.

## 973.09 - ANNOT.



It is not required that a defendant's rejection of probation be clear and unequivocal. A court's focus should be on whether a defendant communicates the intent to refuse probation rather than on the defendant's choice of words. State v. Pote, 2003 WI App 31, 260 Wis. 2d 426, 659 N.W.2d 82, 02-0670.

## 973.09 - ANNOT.



Section 302.425 allows the sheriff to place persons on home monitoring when they are given jail time as a probation condition. A circuit court may not prohibit the sheriff from ordering home monitoring for a probationer ordered to serve jail time as a probation condition. By precluding the sheriff from releasing the probation on home monitoring, the trial court substantially interfered with the sheriff's power in violation of the separation of powers doctrine. State v. Schell, 2003 WI App 78, 261 Wis. 2d 841, 661 N.W.2d 503.

#### 973.09 - ANNOT.



Sex-offender registration as a condition of bail-jumping probation was not authorized by sub. (1) (a). Bail jumping is not one of the offenses enumerated in the sex-offender registration statutes, ss. 973.048 or 301.45, that permit or require registration, and readin, but dismissed, sexual assault charges do not bring a case within s. 973.048. State v. Martel, 2003 WI 70, 262 Wis. 2d 483, 664 N.W.2d 69, 02-1599.

#### 973.09 - ANNOT.



A trial court has the discretionary authority to stay a probationer's conditional jail time while he or she is hospitalized. When the trial court chooses to stay confinement time, the probationer is not a prisoner and is not entitled to credit against such confinement time because the probationer could not be charged with escape. State v. Edwards, 2003 WI App 221, 267 Wis. 2d 491, 671 N.W.2d 371, 03-0790.

#### 973.09 - ANNOT.



An agreement that provided that following a plea of no contest, the defendant would have the opportunity prior to sentencing to procure and return stolen items, and if so the

state would amend the charge to a lesser offense and the sentencing would proceed accordingly, was not invalid under Hayes. The concerns of the Hayes court regarding the limitations of the probation statute and the trial court's lack of authority to amend a judgment after completion of a sentence were not implicated. State v. Cash, 2004 WI App 63, 271 Wis. 2d 451, 677 N.W.2d 709, 03-1614.

## 973.09 - ANNOT.



A court cannot avoid the holding in Schell by modifying the conditions of probation to order the probationer to refuse home monitoring. State v. Galecke, 2005 WI App 172, 285 Wis. 2d 691, 702 N.W.2d 392, 04-0779.

### 973.09 - ANNOT.



This section provides no authority for issuing orders to county sheriffs to transfer prisoners from one county jail to another. State v. Galecke, 2005 WI App 172, 285 Wis. 2d 691, 702 N.W.2d 392,285 Wis. 2d 691, 702 N.W.2d 392 04-0779.

#### 973.09 - ANNOT.



Convicted at the same time under sub. (2) (a) or (b) is not the same as sentenced at the same time. Because the defendant, although sentenced in separate child support and drug cases at a single hearing, was not convicted at the same time within the meaning of the statute, and therefore not serving a single probationary term, the trial court had the statutory authority to order consecutive periods of conditional jail time exceeding one year in total. State v. Johnson, 2005 WI App 202, 287 Wis. 2d 313, 704 N.W.2d 318, 04–2176.

## 973.09 - ANNOT.



Sub. (2) plainly and unambiguously provides that the maximum term of probation is dependent upon the maximum term of confinement for the crime committed and not the maximum term of imprisonment. The maximum term of probation for Class B to H felonies equals the maximum initial term of confinement for those crimes. State v. Stewart, 2006 WI App 67, 291 Wis. 2d 480, 713 N.W.2d 165, 05-0979.

#### 973.09 - ANNOT.



Conditions of probation may impinge upon constitutional rights as long as they are not overly broad and are reasonably related to the person's rehabilitation. Geographical limitations, while restricting a defendant's rights to travel and associate, are not per se unconstitutional. Each case must be analyzed on its facts to determine whether the geographic restriction is narrowly drawn. State v. Stewart, 2006 WI App 67, 291 Wis. 2d 480, 713 N.W.2d 165, 05-0979.

## 973.09 - ANNOT.



A civil settlement agreement can have no effect upon a restitution order while the defendant is on probation unless the circuit court first finds that continued enforcement of the restitution order would result in a double recovery for the victim. After a defendant is released from probation and any unpaid restitution becomes a civil judgment, however, a settlement agreement between the victim and the defendant may preclude the victim from enforcing the judgment. Huml v. Vlazny, 2006 WI 87, 293 Wis. 2d 169, 716 N.W.2d 807, 04-0036.

#### 973.09 - ANNOT.



When a defendant agrees to reimburse the county for the attorney fees of standby counsel or the circuit court informs the defendant of his or her potential liability for the fees and standby counsel functions as traditional defense counsel, ss. 973.06 (1) (e) and 973.09 (1g) give a circuit court the authority to impose the attorney fees of standby counsel as a condition of probation. If a defendant does not agree to reimburse the county or is not informed of the potential obligation to pay the fees of standby counsel, payment of attorney fees may not be a condition of probation, under s. 973.06 (1) (e). When standby counsel acts primarily for the benefit of the court rather than as defense counsel, attorney fees for standby counsel are inappropriate. State v. Campbell, 2006 WI 99, 294 Wis. 2d 100, 718 N.W.2d 649, 04-0803.

#### 973.09 - ANNOT.



When a defendant has served jail time as a condition of probation and his or her probation is later revoked and the defendant commences serving an imposed and stayed sentence, the defendant is entitled to sentence credit for days spent in custody while in conditional jail time status, even if that custody is concurrent with service of an unrelated prison sentence. State v. Yanick, 2007 WI App 30, 299 Wis. 2d 456, 728 N.W.2d 365, <u>06-</u>0849.

#### 973.09 - ANNOT.



Sub. (2) applies to all sentences pronounced at the same time, whether grouped together, because they are related or because of convenience. U.S. v. Stalbaum, 63 F.3d 537 (1995